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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,853	12/31/2001	James Thomas Cook	DANA-265	5316

10291 7590 09/02/2004

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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/029,853

Applicant(s)

COOK ET AL.

Examiner

James F. Hook

Art Unit

3752

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

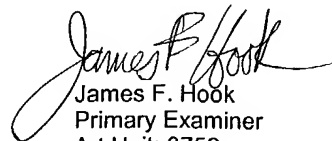
Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1-4 and 6-13.

Claim(s) withdrawn from consideration: 14-19.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


James F. Hook
Primary Examiner
Art Unit: 3752

Continuation of 2. NOTE: the proposed additional language to claim 10 is considered new matter based upon the same reasoning as is found in the final rejection. With respect to the arguments presented, the application does not set forth basis for "less than 30% by weight" as set forth in the previous office action, such a limitation would include any number below 30 to 0. Therefore, there is no support for all other values that aren't covered by the table. Likewise it should not be left up to the reader to try to ascertain what values are present as per percentage that could lead up to any number of values including those exceeding 30%. The suggestion that having one number below the claim limitation is support for a broader wider range is not persuasive, and such is still considered new matter. Based upon the table being relied upon the lowest value that could ever be reached is 28%, however, it should be noted that the range taught by the specification and the table extends higher than 30% and it is also considered new matter to set a limit that was not previously set forth in the specification merely to overcome a reference, meaning to arbitrarily choose a limit that did not exist in the case before which is not representative of what the original specification supports would be new matter. With respect to mechanical expedients it is set forth that the test for whether expedients exists is based upon applicant's specification and whether it teaches that the value is critical to the functioning of the claimed subject matter, not whether it is critical to the prior art reference, and the minor change that would be required to meet the claim language, specifically the prior art would need to be modified by any tiny amount less than it's lower limit is not considered to prevent the prior art from functioning. .